

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHELDON G. ADELSON,

Plaintiff,

v.

MOSHE HANANEL,

Defendant.

Docket No. 04CV10357RCL

**MEMORANDUM IN OPPOSITION TO THE MOTION OF THE DEFENDANT TO
POSTPONE THE TIME TO REPLY TO THE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

This short memorandum is intended to summarise the reasons for the plaintiff's opposition to the motion to postpone.

**The Defendant Has Not Followed The Procedure Set Up In F.R.C.P. For Postponing
Action On Motions For Summary Judgment.**

The proper procedure for a party opposing a motion for summary judgment who wishes to delay action on the motion because of the inability to obtain affidavits or other evidence to demonstrate that there exists a genuine dispute of material facts is to provide the court with a supported motion under F.R.C.P., 56(f). This is not a "technical" issue, but an important substantive matter. Rule 56(f) requires the opposing party to satisfy the court that given time, the resisting party can provide material evidence to defeat the motion. Thus, if the party against whom summary judgment is sought, claims that there are witnesses or documents that are

necessary for a proper adjudication of the motion, must be able to identify the documents witnesses or explain why he cannot at the present time identify them, show the court that he has been diligent in seeking them, and show what the expected evidence would be. The resisting party must make a presentation analogous to an offer of proof. Wright & Miller, *Federal Practice & Procedure*, §2741.

Hananel has made no showing that he could, given time, effectively resist the motion for summary judgment. He has refused to identify any witnesses in this litigation, not only by failing to comply with Rule 26(a) of the Federal Rules of Civil Procedure, but by refusing outright to identify witnesses at his deposition, claiming a “litigation privilege.” He has made vague assertions that there are dozens of witnesses and “thousands” of relevant documents in Israel. He has lawyers in Israel. Surely it would be no hardship for them to obtain affidavits or even depositions from these witnesses and provide the court with some of the documents, he alleges exist. It is unfair to the plaintiff to require him to proceed either in the United States or Israel, if there is no defense to his claims for declaratory relief.

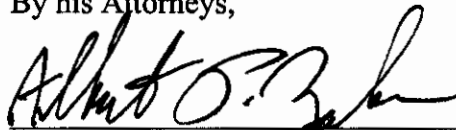
Deciding the Motion For Summary Judgment Before Addressing the Forum Non Conveniens Motion Serves The Private and Public Interest of Judicial Economy.

If the Court grants the motion for Summary Judgment, the motion to dismiss of the defendant becomes moot. There will be no need to address the questions of the convenience of witnesses, the motion for sanctions against Hananel for his palpable frauds on the Court (including his photographically disproved claim that he is too disabled to participate in litigation in the United States). A defense to the Motion for Summary Judgment (if there is one) can be prepared at a lesser cost than a trial or a preparation for a trial. Even if the motion were denied, the work done would be useful for trial preparation and thus, not a wasted effort.

If the Court wishes a more detailed memorandum of law in support of the plaintiff's opposition, the plaintiff's attorneys request a few additional days. We believe, however, that the issues are appropriately outlined for the Court and request that the motion to delay action on the plaintiff's motion should be denied for reasons of non-compliance with the Federal Rules of Civil Procedure, fairness, and judicial economy.

Respectfully submitted,

The Plaintiff,
SHELDON G. ADELSON,
By his Attorneys,

A handwritten signature in black ink, appearing to read "Albert P. Zabin", is written over a horizontal line.

Franklin H. Levy, B.B.O. No. 297720

Albert P. Zabin, B.B.O. No.: 538380

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Dated: January 19, 2006

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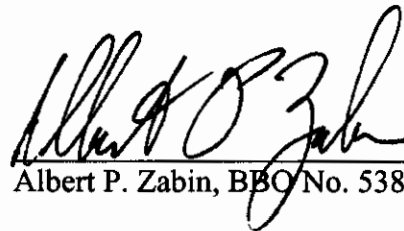
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CERTIFICATE OF SERVICE

I, Albert P. Zabin do hereby certify that I served a copy of the following documents:

1. Opposition of the Plaintiff, Sheldon Adelson, to the Motion of the Defendant to on all counsel of record listed below via e-mail and regular mail this 19th day of January, 2006.

James A.G. Hamilton, Esquire
Perkins, Smith & Cohen, LLP
One Beacon Street
Boston, MA 02108



Albert P. Zabin, BBO No. 538380